(2023) 09 NCLT CK 0013

In the National Company Law Appellate Tribunal, Pricipal Bench, New Delhi

Case No : CA(CAA)/28/ND Of 2023

Midway Dealcom Private Limited Vs

Date of Decision : 11-09-2023

Acts Referred:

Companies Act, 2013 — Section 66, 133, 206, 207, 208, 209, 210, 230, 230(2)(a), 230(2)(b), 230(2)(c), 232

Citation : (2023) 09 NCLT CK 0013

Hon'ble Judges : Ashok Kumar Bhardwaj, Member (J);Dr. Binod Kumar Sinha, Member (T)

Bench : Division Bench

Advocate : Akshay Goel

Final Decision : Disposed Of

Judgement

Ashok Kumar Bhardwaj, Member (Judicial)

1. The captioned application is first motion application jointly filed by the applicant companies viz., M/s Midway Dealcom Private Limited (hereinafter referred to as Transferor Company No. 1/Applicant Company No. 1), M/s Direction Tradecom Private Limited (hereinafter referred to as Transferor Company No. 2/Applicant Company No. 2), and M/s Versatile Commotrade Private Limited (hereinafter referred to as Transferee Company/Applicant Company No. 3) under section 230-232 of Companies Act, 2013, and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the Scheme of Amalgamation (hereinafter referred to as the “SCHEME”) proposed between the applicants.

2. Affidavits in support of the above application sworn by Mr. Vijay Bansal, Director, on behalf of Applicant Companies, is filed. It is also represented that the registered office of all the applicant companies is under the domain of Registrar of Companies, NCT of New Delhi & Haryana and within the territorial jurisdiction of this Tribunal.

3. As has been stated in the application, the Transferor Company No. 1/Applicant Company No. 1 i.e., M/s Midway Dealcom Private Limited is a private limited company which was incorporated on 11.03.2010, under the provisions of the Companies Act, 1956 bearing CIN: U51909DL2010PTC397459, having its registered office at 21/6, West Patel Nagar, New Delhi-110008. The Authorized Share Capital of the Transferor Company No. 1/Applicant Company No. 1 is Rs. 3,00,000/-divided into 30,000 Equity shares of Rs. 10/- each. The Issued, Subscribed and Paid-up Share Capital is Rs. 1,90,000/- divided into 19,000 Equity Shares of Rs. 10/- each.

4. In view of the averments made in the application, the Transferor Company No. 2/Applicant Company No. 2 i.e., M/s Direction Tradecom Private Limited is a private limited company which was incorporated on 19.04.2010, under the provisions of the Companies Act, 1956 and is a company within the meaning of the Companies Act, 2013 bearing CIN: U51101DL2010PTC397457, having its registered office at 21/6, West Patel Nagar, New Delhi-110008. The Authorized Share Capital of the Transferor Company No. 2/Applicant Company No. 2 is Rs. 3,00,000/-divided into 30,000 Equity shares of Rs. 10/- each. It’s Issued, Subscribed and Paid-up Share Capital is Rs. 2,80,000/- divided into 28,000 Equity Shares of Rs. 10/- each.

5. It is submitted that the Transferee Company/Applicant Company No. 3 i.e., M/s Versatile Commotrade Private Limited is a private limited company which was incorporated on 16.12.2008, under the provisions of the Companies Act, 1956 and is a Company within the meaning of the Companies Act, 2013 bearing CIN: U51909DL2008PTC399029, having its registered office at 21/6, West Patel Nagar, New Delhi-110008. The Authorized Share Capital of the Transferee Company/ Applicant Company No. 3 is Rs. 32,00,000/- divided into 3,20,000 Equity shares of Rs. 10/- each. It’s Issued, Subscribed and Paid-up Capital of Transferee Company is Rs. 30,07,150/- divided into 3,00,715 Equity Shares of Rs. 10/- each.

6. The Transferor Company No. 1 & 2 as well as the Transferee Company have filed their respective Memorandum and Articles of Association inter alia delineating their object clauses, as well as their Audited Balance Sheet for the year ended 31.03.2022 and Provisional Balance Sheet as on 31st December, 2022.

7. The Board of Directors of all the Applicant Companies i.e., Transferor Company No. 1 & 2 and Transferee Company, have unanimously approved the proposed Scheme of Amalgamation as contemplated above. Copies of respective board resolutions dated 27.02.2023 passed in the said board meetings have been placed on record.

8. The applicant companies have annexed the certificate issued by the respective statutory auditors clearing the compliance of Section 133 for accounting standards by the respective company.

9. As per the requirement of Section 230(2)(a) of Companies Act 2013, the

applicants have annexed an affidavit affirming that all material facts relating to the Transferee Company such as the latest financial position of the company as also the latest auditors' report qua the financial position of the Transferee Company is brought to fore as all latest financial statements are enclosed alongwith the present first motion application.

10. The applicant companies have also annexed the affidavit, affirming that there are no inspection or investigations proceeding pending against any of the applicant companies under section 206 or 210 or any other provision of the Companies Act, 2013 or under any other law for the time being in force.

11. The affidavit as required in terms of the provisions of Section 230(2)(b) affirming that the proposed Scheme of Amalgamation does not include any capital reduction taking place between the Applicant Companies under Section 66 of the Companies Act, 2013 have been filed by the applicant companies.

12. The affidavits filed by the applicant companies also disclose that the proposed Scheme is not a corporate debt restructuring scheme thus the creditor's responsibility statement and other requirements under Section 230(2)(c) are not applicable to the present case.

13. With respect to Transferor Company No. 1, the captioned application discloses that:

a) The Company is having 3 Shareholders. Certificate from Chartered Accountants certifying list of shareholders is annexed and all of them have given their respective consents by way of affidavits which are annexed to the application;

b) The Company has nil Secured Creditors. Certificate from Chartered Accountants certifying list of creditors is placed on record.

c) The Company has nil Unsecured Creditors. Certificate from Chartered Accountants certifying list of creditors is placed on record.

14. Qua the Transferor Company No. 2, the applicants have stated that: -

a) It is having 3 Shareholders. Certificate from Chartered Accountants certifying the list of shareholders is annexed with application. All the shareholders have given their respective consents by way of affidavits which are annexed to the application.

b) The Company has nil Secured Creditors. Certificate from

Chartered Accountants certifying list of creditors is placed on record.

c) The Company has nil Unsecured Creditors. Certificate from Chartered Accountants certifying list of creditors is placed on record.

15. Regarding the Transferee Company, the applicants have averred that:-

a) The Company is having 4 Shareholders. Certificate from Chartered Accountants certifying list of shareholders is annexed with the application and all of them have given their respective consents by way of affidavits which are annexed with the application.

b) The Company has nil Secured Creditors. Certificate by Chartered Accountants certifying list of creditors is placed on record.

c) The Company is having 1 Unsecured Creditors. Certificate from Chartered Accountants certifying list of unsecured creditors is annexed and the sole unsecured creditor has given its consent by way of affidavit which is annexed to the application.

16. In the wake of the averments made in the application and the documents filed therewith, the following directions are issued qua convening/holding or dispensing with the meetings of the Equity Shareholders, Secured and Unsecured Creditors.

A. In relation to the Transferor Company No. 1/Applicant Company No. 1:

a) With respect to Equity Shareholders: In view of consent affidavits, from all the Equity Shareholders, convening/holding the meeting of shareholders is dispensed with.

b) With respect to Secured Creditors: Since there are no Secured Creditors, therefore the necessity of convening/holding of any such meeting does not arise.

c) With respect to Unsecured Creditors: Since there are no Unsecured Creditors, therefore the necessity of convening/holding any such meeting does not arise.

B. In relation to the Transferor Company No. 2/Applicant Company No. 2:

a) With respect to Equity Shareholders: In view of consent affidavits, from all the Equity Shareholders, convening/holding the meeting of shareholders is dispensed with.

b) With respect to Secured Creditors: Since there are no Secured Creditors, therefore the necessity of convening/holding any such meeting does not arise.

c) With respect to Unsecured Creditors: Since there are no Unsecured Creditors, therefore the necessity of convening/holding any such meeting does not arise.

C. In relation to the Transferee Company/Applicant Company No. 3:

a) With respect to Equity Shareholders: In view of consent affidavits, from all the Equity Shareholders, convening/holding of the meeting of shareholders is dispensed with.

b) With respect to Secured Creditors: Since there are no Secured Creditors, therefore the necessity of convening/holding any such meeting does not arise.

c) With respect to Unsecured Creditors: In view of consent affidavit, the

Unsecured Creditor, convening/holding the meeting of shareholders is dispensed with.

17. In view of the abovementioned notice is directed to be issued to: -

i. Regional Director, Ministry of Corporate Affairs, B-2 Wing, 2 Floor, Paryawaran Bhavan, CGO Complex, New Delhi-110003;

ii. Registrar of Companies at 4th floor, IFCI Tower, 61, Nehru Place, New Delhi-110019;

iii. Official liquidator, Lok Nayak Bhavan, 8th Floor, Khan Market, New Delhi-110001;

iv. Income Tax Department, Income Tax Office, Additional Commissioner of Income Tax, Special Range 4, Central Revenue Building, IP Estate, New Delhi-110002. The notices to Income Tax Authorities shall disclose sufficient details like PAN, ward numbers and assessing officers so that timely and proper reply may be filed.